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IN THE

Supreme Court of the United States

Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

OCTOBER TERM, 1972

No. 71-1442

ROLAND V. COLGROVE,

Petitioner,

against

HONORABLE JAMES F. BATTIN, UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF MONTANA, BILLINGS DIVISION,

Respondent.

Civil No. 783

ROLAND V. COLGROVE,

Plaintiff,

vs.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

MOTION OF INTERNATIONAL ASSOCIATION OF INSURANCE COUNSEL FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

WILLIAM A. WICK,
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International Association of Insurance Counsel respectfully moves the Court, pursuant to Rule 42(3) of the rules of this Court, for an order, granting this Applicant leave to file a brief as *amicus curiae* in the above-entitled proceeding, if and when this Court grants *certiorari* and assumes jurisdiction on the merits.

In support of its motion, Applicant states the following:

1. As an association, composed of more than two-thousand independent defense counsel and house counsel,

representing insurance companies throughout the United States and Canada, Applicant has an interest in this case, because—

(a) Apart from Constitutional questions, Applicant is vitally interested in preserving the essence of our jury trial system on the one hand, while maintaining, on the other hand, sufficient flexibility in the system to permit its adaptation to the needs of changing times: notably, the current need for economy of time and expense in jury trials;

(b) Applicant believes that the rule-making power of United States District Courts is and should be so limited as to preclude, not only rules which conflict with the Federal Rules of Civil Procedure, but also rules which represent "basic procedural innovations";

(c) Applicant believes that basic trial and appellate procedures should apply uniformly throughout the federal court system and that "basic procedural innovations," such as rules which cut in half the traditional twelve-member common law jury, should not be adopted without the kind of widespread and exhaustive consideration which attends the amendment of the Federal Rules of Civil Procedure.

2. Applicant is concerned that this case might be disposed of or decided without careful consideration of the following important questions of law, relating to the scope of the rule-making power of United States District Courts:

(a) Whether or not "basic procedural innovations" like the instant six-member jury rule are beyond the rule-making power of United States District Courts, as held in *Miner* v. *Atlass*, 363 U. S. 641;

(b) Whether or not the instant six-member jury rule is inconsistent with Rule 48 of the Federal Rules of Civil Procedure in either or both of the following respects:

(i) in that Rule 48 was intended to provide a stipulation of the parties as the exclusive means of reducing the size of civil juries;

(ii) in that Rule 48 authorizes the parties to stipulate to a jury either larger or smaller than six members, whereas the District Court's jury rule freezes the jury at six members irrespective of any contrary stipulation of the parties;

(c) Whether or not a federal District Court may lawfully adopt local rules, anticipating changes of Constitutional interpretation which the Supreme Court has not yet announced.

3. None of the above questions of law has been presented by the parties in their Petition or briefs, except issue (b)(i), and applicant believes that issue (b)(i) will bear further analysis.

4. The Petitioner and the Defendant, State Farm Mutual Life Insurance Company, by their respective counsel, have consented to the filing of a brief by this Applicant. Respondent has declined to consent to the proposed brief *amicus curiae*, but Respondent's counsel has indicated that Respondent may not object to Applicant's Motion to file such brief.

Respectfully submitted,

ALSTON JENNINGS,
2200 Worthen Bank Building,
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President of I. A. I. C.,

JOHN C. ELAM,
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Chairman of Federal Rules Committee of I. A. I. C.,

/s/ WILLIAM A. WICK,
WILLIAM A. WICK,
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Attorneys for Applicant.

CERTIFICATE OF SERVICE.

This is to certify that on September —, 1972, three (3) printed copies of this Motion for Leave to File a Brief *Amicus Curiae* were served upon each of the parties to the above-entitled action by depositing the same in the United States mail, with air mail postage prepaid, addressed to the parties' respective counsel of record, as follows:

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